

CONGRESSIONAL AFFAIRS

87-5831

House Education and Labor Committee

full committee mark up on

The Parental and Medical Leave Act of 1987

On 17 November 1987, I attended the House Education and Labor Committee mark up on the Parental and Medical Leave Act of 1987. Apparently, certain key provisions of the bill have been compromised.

Changes from original bill include:

- °companies with 35 (vice 15) or more employees would be affected.
- °10 weeks (vice 18) of leave, including vacation time or annual leave, would be the floor amount mandated by the bill.

The mark up consisted of several representatives presenting amendments to the original bill. Although all of the proposed amendments were voted down, the majority of the time was spent discussing them. Issues of the amendments included:

- °denying health insurance benefits to those who did not return to work
- °make the provisions of this bill part of a cafeteria plan for employee benefits so that this type of leave would be optional.
- °permit employers to alter other benefits they currently offer in order to defray costs of this benefit.
- °include accumulated sick leave in the 10-week total allowed.
- °delete public agencies from the definition of employer (e.g. school districts, teachers, police, firemen, hospitals, etc.) as key people in public service organizations cannot be away from work for extended periods.
- °exempt elementary and secondary school workers.
- °allow work at home.
- °prohibit duplicative leave; i.e., employee with spouse at home would not be eligible for benefits of this bill.
- °employers who violate bill would only be required to pay the employee for lost wages and any other form of lost compensation.

All of the above amendments were vetoed, but the bill passed the Committee. This bill would also establish a panel to study ways of providing salary replacement for employees who take any such leave. The panel would be established upon enactment of the bill and within two years would be required to submit a report to Congress, including legislative recommendations concerning implementation of a system of salary replacement for temporary medical leave and parental leave. The bill also contains a provision to amend Chapter 63 of title 5, United States Code, to include these same benefits.

Senate Subcommittee Hearing on
THE PARENTAL AND MEDICAL LEAVE ACT OF 1987

On 29 October 1987, I attended the seventh and final hearing on the Parental and Temporary Medical Leave Act held by the Senate Subcommittee on Children, Families, Drugs and Alcoholism. The Chairman of the Subcommittee and chief sponsor of the legislation, Sen. Christopher J. Dodd, presented his opening statement (copy attached), which described his position on the legislation and discussed previous hearings held in several major cities across the country.

The witness list and copies of prepared statements are also attached.

The first witness was Mr. William J. Gainer, Associate Director of Human Resources Division, GAO. Mr. Gainer discussed GAO's estimated costs of the act based on available studies and a GAO survey of 80 firms in two metropolitan labor markets: Detroit, MI and Charleston, SC. Before elaborating on his agency's estimates, Mr. Gainer briefly summarized the key provisions of the bill as they were presented at that time.

KEY PROVISIONS:

Any company with 15 or more employees would be required to grant a worker the following:

- °up to 18 weeks of unpaid leave over a 24-month period upon the birth, adoption, or serious health condition of a child (men as well as women).
- °up to 26 weeks of unpaid leave over a 12-month period, for a serious health condition.
- °continued health benefits for a worker on unpaid leave on the same basis as if the employee were working, although they would not be required to continue other benefits, such as life insurance and retirement.
- °upon returning to work, an employee would resume the same (or an equivalent) job.

Mr. Gainer said that the primary cost for employers would be health insurance coverage, that employee replacement cost would be negligible since less than one in three would need to be replaced for the short period of leave. He stated that employees would most likely use any available sick, annual and disability leave first which would reduce the potential cost. His final estimate of cost to employers was \$500 million.

The second group of witnesses included three private citizens who described their personal circumstances, which demonstrated a need to pass such a bill. One single father of 6 children had lost his teaching position after being away from work for an extended period of time to care for his youngest daughter who had a malignant brain tumor. Another woman had adopted several critically handicapped or "special needs" children and often needed to take off to care for them. The third witness was a typical, young, married, working mother of a 10-month old (She brought the baby, which was very effective.), who described her and her husband's financial situation as being very tight and expressed their hopes of having more children in the future. This legislation has been nicknamed the "yuppie" proposal since it would greatly benefit this group — professional women who want or need to maintain a career and also raise a family.

Other witnesses included a clinical social worker from St. Jude's Hospital who expressed the need for such legislation in view of the financial stress that is placed on parents of children who are seriously ill. Dr. Jerome Paulson from the American Academy of Pediatrics defined the term "seriously ill." Senator Dodd then made the point that workers must often choose between job and family due to the great number of instances which would require time away from work.

The third panel of witnesses discussed legal ramifications of such a bill. (Prepared testimony is attached.) Stephan J. Markman, Assistant Attorney General, U.S. Dept. of Justice, speaking for the administration, said that a benefit requirement "directly contravenes our nation's consensus that fringe benefits should be the subject of voluntary negotiation between employers and employees." He went on to say that "the voluntary approach maximizes the welfare of employees because it leaves them free to choose for themselves which benefits they most desire." He also argued that the legislation would be most felt by smaller businesses and could lead to discrimination against young women who are more likely to want such leave at some point in their careers. Mr. Markman described the federal government's leave policies which are more liberal than the proposed bill and are also worked out on a case-by-case basis which gives the employee and the employer the needed flexibility to deal with family issues as they arise. His position was that voluntary programs are more beneficial to both employees and employers and feared that, over time, mandatory national legislation would become a ceiling, not a floor, on the level of benefits.

I did not stay for the afternoon sessions, which included testimony from business associations, businesses and community organizations. However, I was able to obtain some of the prepared testimony (attached). Businesses, especially smaller companies, are opposed to the bill since they already have leave policies covering births and illnesses but want to maintain the flexibility to respond to changing demands. They also fear that such a precedent would encourage more attempts to force businesses to pay for every benefit deemed desirable by various elements in the work force. The community

organizations represented pro-family programs. Thus, they strongly support the bill and indicated that the stresses caused by job demands coupled with those of child rearing are often the causes of broken homes and child abuse. Their position was that this legislation would relieve a lot of this stress and would serve to strengthen and preserve family life in our country.

While not included on the hearing agenda, the (then) Secretary of Labor is opposed to the legislation. A memorandum from Mr. Brock (copy attached) appeared on the press tables during the hearing, which outlines his reasons for opposing the bill and stresses the need for employers to have the flexibility to respond to different circumstances. His memo also mentions several projects initiated within the Department of Labor to address the problems of dealing with a changing workforce. It should also be noted that the Department of Labor would be responsible for enforcing this legislation if enacted.